IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 333 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GOPALBHAI B SHARMA

Appearance:

MR ND GOHIL, APP. for Appellant.

NONE PRESENT FOR THE RESPONDENTS.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. This is an appeal filed by the State against the order of learned JMFC, Chikhli in Criminal Case No. 583 of 1989 dated 2.1.1992. The respondent accused was charged with the offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration

Act. The complaint was lodged by the designated Food Inspector. It was stated in the complaint that chilly powder was purchased from the respondent accused and after following due procedure as prescribed under the provisions of the Prevention of of Food Adulteration Act, one sample was sent for analysis. That on receipt of the report of the public analyst it was found that chilly powder was adulterated and accordingly the complaint was filed. The learned JMFC, Chikhli after taking into consideration the evidence on record as well as various depositions acquitted the accused by his order dated 2.1.1992 and it is this order which is under challenge in this Criminal Appeal.

2. In the appeal the grounds for assailing the impugned order are firstly, that the learned Magistrate has committed an error in holding that the Food Inspector had not been appointed for Valsad and Dangs districts, secondly, that the learned Magistrate has erroneously decided that the sanction in question granted by the Local Health Authority was not legal and valid as the same was granted without any application of mind. In support of these grounds the learned APP pointed out that the notification which was produced on record appointing the complainant as Food Inspector indicated that the complainant was appointed to be a Food Inspector for the entire State of Gujarat, and therefore, it was not necessary to show that there was any separate notification for the areas of Valsad and Dangs districts. It was further submitted that, in so far as the second ground is concerned a Division Bench of this Court in the case of M.M.Pandya Vs. State of Gujarat in Criminal Appeal No.841 of 1980 observed that it was not necessary for the Local Health Authority to assign any reason while granting the sanction. It was therefore urged on behalf of the appellant that the order of acquittal was required to be reversed and the respondent accused be held guilty of the charges framed against him.

3. On a close reading of the order and judgment of JMFC, Chikhli it is seen that the following reasons are assigned as basis of the order of acquittal ;

i) As per deposition at exhibit 64, of prosecution witness Prabhudas Tulsidas, the panch, it is seen that the panchnama was ready and he was merely asked to append his signature; that the panch witness has admitted in cross-examination that he is not aware of the contents of the panchnama or the proceedings and he has signed without reading or verifying the contents of panchnama.

ii) The sanction granted by the Local Health Authority merely mentions "in public interest" and does not assign any other reason and is in a printed proforma, thus, leading to belief and inference that the authority concerned has not applied his mind before according sanction. In relation to this it is further observed that the hand written noting made in the printed proforma mentioning "in public interest" is in different ink and different hand writing than that of the signature of the Local Health Authority and thus according to the learned Magistrate there is reason to believe that the authority put his signature without applying his mind.

iii) The report of the public analyst which is produced on record shows that only microscopic test has been carried out and chemical test has not been conducted. The learned Magistrate relying upon the Supreme Court decision in the case of Jagdish Chandra Vs. State of Uttar Pradesh, reported in 1981 CRI.L.J.739, stated that if the product is held to be adulterated based on only microscopic test such finding should be considered to be doubtful.

iv) The notification at exhibit 12 produced by the complainant shows that it is applicable to all the local areas of the State of Gujarat but there is no notification showing local applicability to Dangs and Valsad districts. It is further stated that in the cross-examination the complainant has admitted that no supporting evidence has been produced to show that the place where the sample is collected is falling within the notified area.

4. Therefore, as it can be seen there are four basic reasons assigned by the learned Magistrate for acquitting the accused. In so far as the ground regarding non reliability of microscopic test as well as the panch witness having signed on a panchnama which was already prepared, nothing has been shown to us to assail those grounds. In so far as other two reasons are concerned which have been challenged in the grounds of appeal and on which submissions were made, assuming that what is contended is correct, inspite of that, if the other two reasons which have weighed with the learned Magistrate have not been shown to be irrelevant or against the evidence on record, then the order of acquittal would stand even on the basis of those two reasons, the

prosecution having failed to prove its case beyond reasonable doubt.

5. In view of the facts and circumstances of the case, as well as the evidence on record we do not find any reason to interfere with the impugned order dated 02.01.1992 and we dismiss this appeal. Records and Proceedings be returned.

Sd/-
(D.A.Mehta, J)

m.m.bhatt